

Ex#10

## Release Findings

Mine Name: Cherry Hill Park Mine  
Operator: Nelco Contractors, Inc.

I.D. No.: S/049/048  
Mineral Ownership: Fee  
Surface Ownership: Fee

**Disturbed Area:** Permitted for 5 acres, No activity  
(disturbance) performed under this permit.  
**Acres Proposed for Release:** All

### Surety

**Amount:** \$17,000 in the form of a letter of credit from Zion's Bank ( #ZSB801240).

### **Setting and Premining Environment**

This site is located approximately 2.5 miles from Colton, Utah in Section 36, T11S, R8E, Utah County, Utah. It is located within a sagebrush/mountain brush community. Annual rainfall is about 20 inches per year. This quarry was originally disturbed in the 1990's by Emery Industrial Resources, who had filed as a small mining operation. By 1998, the operation had expanded to 20.6 acres, and after enforcement action, Emery had submitted a NOI for a large mining operation. This Notice received tentative approval. Final approval was not granted since Emery did not post the required reclamation surety. Mining had ceased in 1998 and on June 23, 2003, the Division received a copy of "Findings of Fact, Conclusions of Law and Order" issued by Board of Oil, Gas & Mining to Dan Powell and Emery Industrial Resources. Order: A) SMO is withdrawn; B) cease any and all mining operations; C) w/in 60 days submit \$43,500 from Hearing date of May 28, 2003 (July 27); D) failure to submit surety w/in 60 days, the Board grants all additional relief requested in paragraphs A, B, C & D of the 4/10/2003 Notice of Agency Action to cease mining and begin immediate reclamation; or DOGM will reclaim and seek recovery of all costs and expenses from operator. By the fall of 2004, reclamation of the site had begun, and by the end of October, 2004, with approximately 7.7 acres fully reclaimed (regraded, topsoil replaced, and seeded) and an additional 2.9 acres regraded, and an additional 9 acres still needing reclamation, winter weather set in, ending the reclamation activity for the year.

On November 17, 2004, the Division received the NOI for a SMO (5 acres) from Nelco, the 5 acres were within the remaining 9 acres of disturbance from the Emery Industrial Resources site. Nelco posted a surety (LOC for \$17,000) and agreed to take over the reclamation responsibility if they were allowed to mine. To date, Nelco has not been allowed to mine since Utah County has not permitted Nelco's operation, and would not transfer Emery's permit to Nelco. After trying to satisfy Utah County for over 2-1/2 years, on August 20, 2007, Nelco requested the Division close the file and release his bond. The site was inspected on July 17, 2007. Observations made during the inspection determined that there has been no mining activity on this area since Emery Industrial Resources ended reclamation activities in the fall of 2004.

### **Operations**

Even though Nelco obtained the mineral and surface lease, and had filed a NOI and posted a reclamation surety with the Division, because Utah County has not authorized this operation, Nelco has not conducted mining operations under this permit (this was verified during a site inspection on July 17, 2007).

### **Reclamation**

Since Nelco was not allowed to mine on this previously disturbed site, they are not under obligation to reclaim.

### **Recommendation**

The Division should honor the request to close this file and release Nelco from further reclamation obligations. The Division still holds \$23,613 of Escrowed funds from Emery Industrial Resources M0490021 to complete the reclamation of this site.

Lynn Kunzler, Senior Reclamation Specialist

Name/Title

October 26, 2007

Date

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL

Ex. 9



MARK L. SHURTLEFF  
ATTORNEY GENERAL

RAYMOND HINTZE  
CHIEF DEPUTY

*Protecting Utah • Protecting You*

KIRK TORGENSEN  
CHIEF DEPUTY

August 30, 2004

Stephen Powell  
dba Powell Rock  
376 Giruard Avenue  
Price, Utah 84501

Dan Powell, dba Emery Resources,  
Hand delivered and sent in care of  
Sidney Balthasar Unrau  
Courtyard at Jamestown  
3610 North University Avenue #375  
Provo, Utah 846034

VIA FAX (801) 705-8480

Re: Termination of the Work out Agreement for the Cherry Hill Park Mine.

Dear Dan and Stephen Powell and Mr. Unrau:

On August 20, 2004, Stephen Powell and Dan Powell a signed copy of the Letter of Understanding intended as an addendum to the Agreement for Reclamation of the Cherry Hill Park Mine. The first recital in the Agreement provides "Emery is the current holder, as lessee of certain rights to mine real property (the lease) . . . and that the lease is current and Emery has the right under the lease to remove the stockpiled materials." In the Letter of Understanding the first recital as revised says that "Paragraph 1 of the RECITALS is clarified by the following: Emery believes the lease is current, and has not been notified by the owner to the contrary . . . ."

On August 27, I was provided with a copy of a letter dated July 27, 2004 from Paxton R. Guymon, Mr. E.J. Stokes attorney, addressed to Dan Powell and Emery Industrial Resources Incorporated which says it is "RE: Notice of Default and Termination of Lease." The third paragraph says that as a result of the failure to mine and other deficiencies the "Lease has expired and terminated." The letter suggests that Mr. Stokes may consider re-negotiating the lease. I am advised that this letter was received, and that there has been no response. At the end of the day on August 27<sup>th</sup> I received a faxed copy of another letter from Mr. Guymon to you which states that further negotiation of the lease will no longer be considered.

Your signing of the Letter of Understanding after having been sent the letter from Mr. Stokes attorney is a gross misrepresentation of the facts, if not an outright fraud on the Division.

This misrepresentation regarding your rights under the lease, and the consequential questions about the your status as a valid lessee, gives the Division substantial reason to terminate the Agreement for Settlement and Reclamation.

In addition, you continue to be barely in compliance with your obligations to the Division under the Agreement. You are required under paragraph 4d "upon commencement of shipments [of the stockpiled materials] . . . to begin work to reclaim those portions of the mine site affected by prior mining." As of this date, none of the area referred as affected by prior mining has been reclaimed, although almost all of the stockpiled material that can be sold has been removed. Given the failure to begin work despite having sold most of the stockpiled material your ability to perform this work has fallen into question. Under the provisions of paragraph 4e reclamation work is *not* to be paid for out of the escrow until the amount of the escrow exceeds the estimate of the cost of the remaining work. You are also obligated (paragraph 4c) to make payments within 20 days of each week's invoice based on records to be provided monthly. The last payment was received July 29, 2004.

Unless prior to September <sup>7</sup>~~6~~, 2004 at 5:00 p.m. you provide evidence that the lease is current, make the outstanding payments into escrow, and demonstrate that you are prepared and able to complete the reclamation work, the Agreement will be terminated and you will forfeit all rights and all monies escrowed under the Agreement.

Sincerely,

A handwritten signature in dark ink, appearing to read "Steven F. Alder", written in a cursive style.

Steven F. Alder  
Assistant Attorney General

cc: Mary Ann Wright  
Daron Haddock  
E.J. Stokes

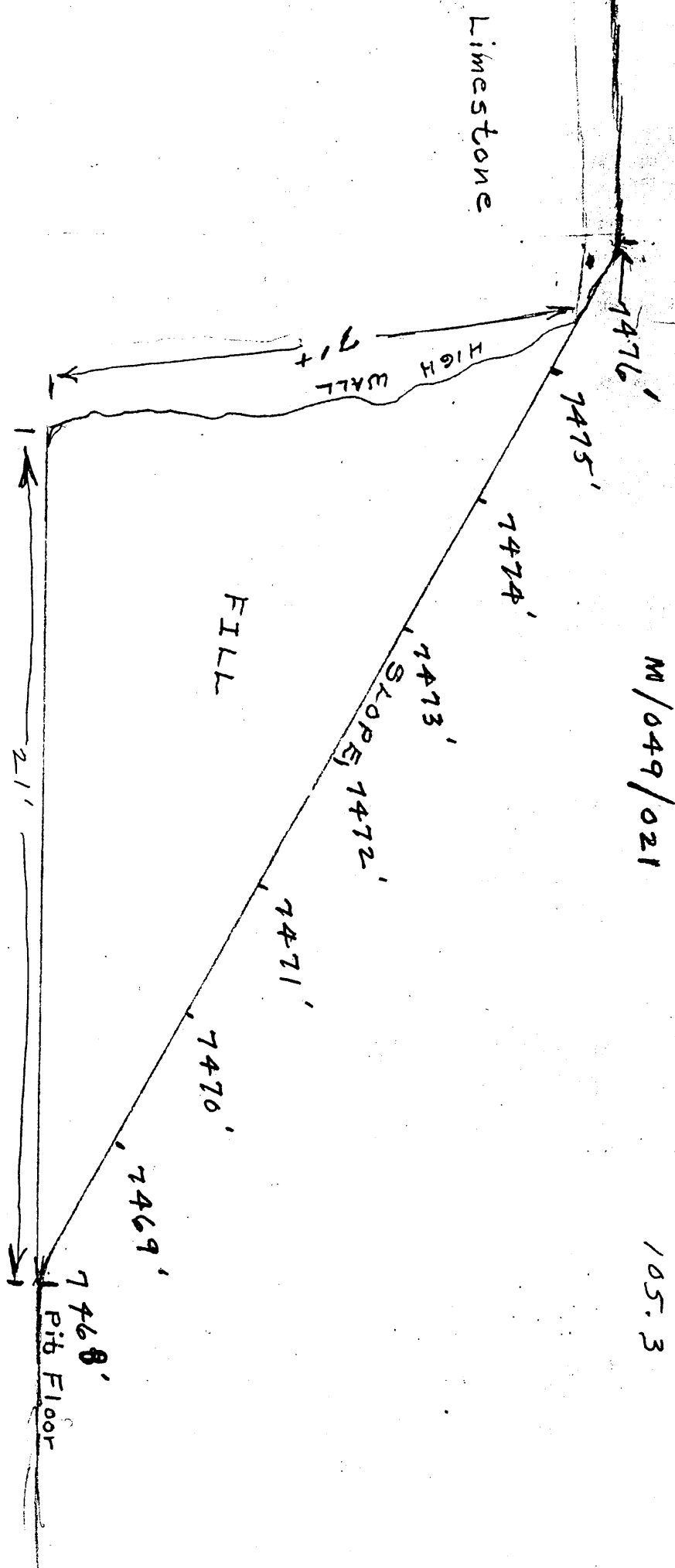
TYPICAL Pit Cross Section

Cherry Hill Park Quarry

M/049/021

Plate 3

105.3



operator copy

RECEIVED

MAR 12 2002

DIVISION OF  
OIL, GAS AND MINING

Ex 8



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt  
Governor

Kathleen Clarke  
Executive Director

Lowell P. Braxton  
Division Director

1594 West North Temple, Suite 1210

PO Box 145801

Salt Lake City, Utah 84114-5801

801-538-5340

801-359-3940 (Fax)

801-538-7223 (TDD)

Ex 7

August 16, 2001

Dan L. Powell  
Emery Industrial Resources  
P. O. Box 489  
Price, Utah 84501

Re: Meeting With Division Staff to Discuss Second Plan Review, Emery Industrial Resources Inc, Cherry Hill Park Mine, M/049/021, Utah County, Utah

Dear Mr. Powell:

Thank you for meeting with me and Wayne Hedberg on July 30, 2001 at 2:30 p.m. The purpose of the meeting was to discuss the status of your Cherry Hill Park Mine and the latest review which the Division had sent to you on September 30, 1999. The Division appreciates that fact that you want to finalize the permitting for this site in a timely manner.

During the meeting, we discussed what was being asked for under each heading of the September 30<sup>th</sup> review document. The Division offered clarification of why certain maps and information was still being requested. Among the items discussed that are considered key to your providing an adequate response to the review are:

1. Documentation of pre-existing structures and disturbances that have not been re-impacted by your operation. Also, documentation of those pre-existing structures that are currently being used by your operation that are intended to remain as part of the post-mining land use (i.e. access road, etc.). A copy of your lease agreement with the current landowner (or a subsequent letter from him), stating that these structures/facilities, such as the access road, are to be left when your mining operations end, would provide such documentation. As stated, these facilities need to be included in your permit area (because they are being used to facilitate your operation), but with proper justification and documentation, reclamation would not be required (nor would reclamation costs be included in the reclamation surety).

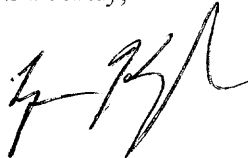
Page 2  
Dan L. Powell  
M/049/021  
August 16, 2001

2. Only a maximum 10 foot thickness of material, with a seven foot average thickness, is being removed from the site. Apparently cross sections had not been provided with the last submittal received by the Division. A copy of these cross sections was made at the meeting and attached to the Division's copy.
3. Topsoil stockpiles that will remain beyond the season in which they are created will be seeded with an interim stabilization seed mix. All topsoil stockpiles will be appropriately signed to reduce the likelihood of impact until they are used for reclamation.
4. Documentation that the Company doing the actual mining for you has an Air Quality Approval Order.

We also discussed the likelihood that you would transfer this operation to Utah Rock, Inc. once the permit is finalized.

You agreed that 45 days from our meeting date would give you enough time to prepare and return your response to the remaining deficiencies. Please provide your response for our review on or before September 17, 2001. Thank you for your cooperation in completing this permitting action.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Kunzler', with a stylized flourish at the end.

Lynn Kunzler  
Senior Reclamation Specialist

State of Utah  
Department of Natural Resources  
Division of Oil, Gas, and Mining  
1594 West North Temple, Suite 1210  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801

June 29, 2001

EX 6



Attention: D. Wayne Hedberg  
Fax # (801) 359-3940

Re: Your letter dated January 23, 2001 of which was sent to the wrong address and of which was hand delivered to me on 5-7-01 - Re: Cherry Hill Park M/049/021.

Dear Mr. Hedberg;

In reviewing your letter and before a formal response can be made I feel it appropriate to first meet with Mr. Lynn Kunzler and review those items that you requested in your letter. At this point I am questioning several items that you requested. Request is made for the following:

1. A meeting to review those items
2. An extension to respond

I appreciate your consideration in this matter.

Sincerely, Dan L. Powell - Agent  
For: Emera Industrial Resources Inc



State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

EX 5

Michael O. Leavitt  
Governor

Kathleen Clarke  
Executive Director

Lowell P. Braxton  
Division Director

1594 West North Temple, Suite 1210  
PO Box 145801  
Salt Lake City, Utah 84114-5801  
801-538-5340  
801-359-3940 (Fax)  
801-538-7223 (TDD)

January 23, 2001

CERTIFIED RETURN RECEIPT  
7000 0520 0021 7582 8395

Dan L. Powell  
Emery Industrial Resources  
P.O. Box 253  
Castledale, Utah 84513

*Hand delivered to  
Dan Powell 5/7/01.  
This went to wrong  
address in January.  
JB.*

Re: Permit Status, Emery Industrial Resources, Inc., Cherry Hill Park Mine, M/049/021, Utah County, Utah

Dear Mr. Powell:

On September 30, 1999, the Division sent you a review of your draft Notice of Intention to Commence Large Mining Operations for the Cherry Hill Park Mine, located in Utah County, Utah. To date, the Division has not received a response to this review. We request that you submit your response to this review within 30 days of your receipt of this letter. We have attached another copy of our previous review document in case you have misplaced the original.

Before we can grant tentative approval of your application, the attached review comments will need to be addressed. The comments are listed under the applicable Minerals Rule heading. Please format your response in a similar fashion.

If you have any questions in this regard, please contact me, Lynn Kunzler or Doug Jensen of the Minerals Staff. If you wish to arrange a meeting to sit down and discuss this review, please contact us at your earliest convenience. Thank you for your cooperation in completing this permitting action.

Sincerely,

D. Wayne Hedberg  
Permit Supervisor  
Minerals Regulatory Program

jb  
Attachment: Review  
M49-21-ltr



**REVIEW OF NOTICE OF INTENTION TO COMMENCE LARGE MINING OPERATIONS**  
**(Second Review)**  
**Emery Industrial Resources, Inc.**  
**Cherry Hill Park Mine**

**M/049/021**

**R647-4-105 - Maps, Drawings & Photographs**

**105.2 Surface facilities map**

The map provided does not include the access road and pre-existing structures as part of the affected area. Even though a variance to leave these facilities for post-mining land use was requested by the surface owner, they need to be included in the affected area. (LK)

The proposed truck scale indicated on the site map falls within an area outside the affected area boundary. If the scale is constructed in this area, the impacted area will become a part of the mine site disturbance. (DJ)

**105.3 Drawings or Cross Sections (slopes, roads, pads, etc.)**

3.16 The response still does not include a readable topographical map that indicates the final reclamation contours. (DJ)

**R647-4-106 - Operation Plan**

**106.6 Plan for protecting & redepositing soils**

The plan states that topsoil is usually respread within a two-year period, which is not a sufficient period of time for any substantial erosion to occur. The Division disagrees with this statement. Any topsoil that is not respread during the same season that it is salvaged needs to be seeded with a cover crop (i.e. thickspike wheatgrass and yellow sweetclover). All topsoil stockpiles should also be identified with signs so that workers do not inadvertently cause further impact to the topsoil during operations. (LK)

**106.7 Existing vegetation - species and amount**

A site inspection of the area on September 21, 1999 confirmed the vegetation ground cover of the surrounding areas to be 50%. This figure will be used for establishing the reclamation standard of 35% ground cover (70% of the pre-existing ground cover). (LK)

**R647-4-107 - Operation Practices**

**107.4 Deleterious material safely stored or removed**

Fuel storage and spill mitigation is not addressed. (DJ)

**R647-4-109 - Impact Assessment**

**109.4 Slope stability, erosion control, air quality, safety**

Please describe dust control plans (i.e. water sprays on crushers, stockpiles, roads, etc. Also, provide copies of the appropriate air quality permit(s) regarding the generation and control of dust at your operations. (DJ)

**R647-4-110 - Reclamation Plan**

**110.2 Roads, highwalls, slopes, drainages, pits, etc., reclaimed**

Please describe how pads will be reclaimed (i.e. regrading, ripping with a dozer to a depth of 2 feet, etc.). Will any of the waste materials be used as a substitute soil material? If so, please describe how it will be augmented with soil amendments (fertilizer, compost, etc.) to make it a suitable soil substitute. (DJ)

**110.3 Description of facilities to be left (post mining use)**

As stated in previous reviews, the Division cannot allow any structures or facilities to be left at the time of reclamation without a letter from the current landowner requesting that specific structures be left for the intended post mine use. Please provide a copy of this letter which outlines the proposed post mining plans for the facilities. Indicate who will be responsible for continued maintenance and ultimate reclamation of the structures. Without this documentation, detailed reclamation plans and bonding for all structures and facilities will be required. (LK)

**R647-4-111 - Reclamation Practices**

**111.8 All roads & pads reclaimed**

See comments under R647-4-110.3

**111.11 Structures & equipment buried or removed**

The response indicates trash and debris will be hauled off and/or buried on site. Please provide evidence from Utah County that burying trash on your site is permitted. Otherwise, plan to haul all trash off site to an approved landfill. (DJ)

**111.12 Topsoil redistribution**

The operator's response alludes to their comments under 107.5. However, it does not address the redistribution of the soil. Please provide the information to address this deficiency. (DJ)

**R647-4-112 - Variance**

A variance to Rule R647-4-111.8 was requested to leave the access road as per the request of the surface land owner. *Before this variance can be approved, the Division must receive*

*written documentation from the land owner stating he needs the access road for his continued (post-mining) use of his property (see comments under R647-4-110.3). (LK)*

A variance to Rule R647-4-111.9 was requested to allow water to impound along the northern edge of the quarry. As discussed in the response, these areas would only accumulate water during snow melt and summer thunder storms. Water thus accumulated would infiltrate into the ground or evaporate within a short period of time. This would control any sediment from leaving the site. *The Division concurs with this assessment and hereby approves this variance. (LK)*

A variance to Rule R647-4-111.11 was requested to leave the metal building to the north of the access road and the loading ramp and chute facilities along the south side of the access road as per the request of the surface land owner. *Before this variance can be approved, the Division must receive written documentation from the land owner stating he needs these facilities for his continued (post-mining) use of his property (see comments under R647-4-110.3). (LK)*

A variance to Rule R647-4-111.12 was requested to not respread topsoil on approximately 1.5 acres of pre-law disturbance. These two areas are shown on the map. No soils were salvaged from these areas when initially disturbed. Topsoil is sparse in the area (1-3 inch depth) and would require a large borrow area to obtain topsoil to cover the area. The subsoils in the area are not considered to be detrimental to plant growth. These areas will receive all other reclamation treatments (ripping, fertilizer and seeding) that the rest of the site will receive. For these reasons, *the Division concurs with the need for, and hereby approves this requested variance. (LK)*

A variance to Rule R647-4-111.13.11 was requested to not meet the reclamation standard for the pre-law disturbed areas (1.5 acres) that will not receive topsoil (see previous variance). These areas will receive all other reclamation treatments and it is anticipated that a fair vegetation cover will be established. Although it will be less than the 35% reclamation success standard, these areas are not expected to show signs of accelerated erosion and any sediment that is developed will be contained on site. *The Division hereby approves this requested variance. (LK)*

#### **R647-4-113 - Surety**

Attached is a preliminary cost estimate for the reclamation surety. In developing the cost estimate, the Division considered the reclamation plan as presented (with the assumption that the necessary documentation will be provided to approve the requested variances to leave the access road, building and loading ramp and facilities). The Division also added contingency costs, mobilization and inflation factors. Where costs were not provided for various line items, the Division used standard third party costs. Acreage for the estimate is based on the Division's September 22, 1999 inspection that included a GPS survey of the disturbed areas. Your preliminary estimate indicates a five acre area was reclaimed in 1998 at a cost of \$1000/acre. The area shown on the map measures approx. 4.3 acres, this would equate to a

Page 4  
Second Review  
M/049/021  
September 30, 1999

reclamation cost of \$1190/acre. A site visit on 9/21/99 indicates that only recontouring has been done in this area, final costs for respreading soils and seeding needs to be included in this estimate. (DJ)

**R647-4-115 - Confidential Information**

The only information the Division can hold as confidential is information relating to the location, size and nature of the mineral deposit.

Attachment: Preliminary Surety Estimate

1	RECLAMATION SURETY ESTIMATE	last revision	09/29/99			
2	Emery Industrial Resources, Inc.	filename M49-21-bnd.WB2				
3	Cherry Hill Park Mine					
4	M/049/021	Utah County				
5						
6	Prepared by Utah State Division of Oil, Gas & Mining					
7						
8	<b>-This estimate uses a D8 size dozer for most earthwork</b>					
9	<b>-access road, building, loading ramp and facilities not included in this estimate (0.85 acres)</b>					
10	<b>-1.5 acres not to receive topsoil (variance)</b>					
11	<b>-4.2 acres has been regraded (inspected 9/22/99)</b>					
12						
13						
14	<b>Note: actual unit costs may vary according to site conditions</b>	<b>last unit cost update</b>	<b>08/25/99</b>			
15	<b>-Amount of disturbed area which will receive reclamation treatments =</b>	<b>19.75 acres</b>				
16	<b>-Estimated total disturbed area for this mine =</b>	<b>20.6 acres</b>				
17						
18	<u>Activity</u>	<u>Quantity</u>	<u>Units</u>	<u>\$/unit</u>	<u>\$</u>	<u>Note</u>
19	Regrading facilities areas	15.55	acre	1190	18505	(1)
20	Ripping pit floors, stockpile & compacted areas	19.75	acre	220	4345	(2)
21	Topsoil replacement - dozer (18.25 acres)	4900	CY	0.47	2303	(3)
22	Broadcast seeding	19.75	acre	170	3358	(4)
23	General site cleanup & trash removal	5	acre	50	250	(5)
24	Equipment mobilization	1	equip	1000	1000	(6)
25	Reclamation Supervision	5	days	372	1860	(7)
26		Subtotal			\$31,620	
27						
28	10% Contingency				3162	
29		Subtotal			\$34,782	
30						
31	Escalate for 5 years at 3.27% per yr				6071	
32		Total			\$40,853	
33	Rounded surety amount in yr 2004-\$				<b>\$40,900</b>	
34	Average cost per disturbed acre =				\$1,985.44	

Note	
(1)	Estimate provided by operator (4.2 acres regraded @ \$5,000)
(2)	Means 1998 & Rental Rate Blue Book 4/98: Cat D8N, U, multi shank rippers, speed 1.0 mph
(3)	Means 1998 & Rental Rate Blue Book 4/98: Cat D8N, U, mtl 2550 lb/CY, 100 ft push
(4)	DOGM general estimate - broadcast seeding
(5)	DOGM general estimate - site cleanup & trash removal
(6)	DOGM general estimate - equipment mobilization
(7)	Means 1998, 010-036-0180, project manager, minimum \$1,815/wk
Last unit cost update	08/25/99

EX 4

Dan Powell  
COPY

mar 3  
1999

E.I.R  
**EMERY INDUSTRIAL RESOURCES, INC.**  
967 South 680 West - Payson, Utah 84651  
Phone: (801) 465-2455 - Fax: (801) 465-2455

**STATE OF UTAH**  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS, AND MINING  
355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
Attention: D. Wayne Hedberg  
Permit Supervisor  
Minerals Regulatory Program

March 1, 1999

Re: Your letter dated 12-9-98 requesting Emery Industrial Resources, Inc., provide to D.O.G.M. addition information that is necessary to complete permitting of Cherry Hill Park Quarry having File #M/049/021, Utah County, Utah..

Dear Mr. Hedberg:

As per your request, Emery Industrial Resources, Inc., submits the following:  
An updated surface facilities and disturbed area map of the entire project area which has been modified and updated from a map submitted to the Division on 1-8-99. On 1-8-99 in a meeting with Mr. Lynn Kunzler it was determined that even with that reclamation that was performed in Fall of 1998, the total acreage of disturbed area still exceeded 5 acres so therefore Emery Industrial Resources, Inc. submits the following information requested as per a Large Mining Operation.

**R647-4-105 - Maps, Drawings & Photographs.**

105.1 Topographic base map, boundaries, pre-act disturbance:

RESPONSE: See map submitted and attached hereto.

105.2 Surface facilities map:

RESPONSE: See map submitted and attached hereto.

105.3 Drawings or Cross Sections (slopes, roads, pads, etc.):

RESPONSE: See Typical Pit Cross Section drawing attached hereto.

3.15 Clearly identify the location of any drainages disturbed during mining and any reclamation plans for those drainages.

RESPONSE: There are no significant drainages within any of those areas

in which mining has occurred or in any of those areas in which mining will occur in the future.

- 3.16 The application fails to identify on the topographic map supplied, the actual location of the project in relationship to the disturbance. The plan also does not contain a final reclaimed surface contour map showing proposed/projected surface elevations upon final reclamation in relation to surrounding topography.

RESPONSE: See map submitted and attached hereto.

- 3.17 Please provide a reclamation treatments map which identifies disturbed areas which will be reclaimed, reclamation treatments, and disturbed areas which will not be reclaimed by means of color coding or cross hatching. This map could also identify areas which are included in a variance request(s). Please provide a separate map of the variance areas if one combined drawing is too cluttered.

RESPONSE: Please note that the whole site disturbed will be treated in the same manner. RE: Same mining procedures and same reclamation procedures. Also see map submitted and attached hereto.

#### **R647-4-106 - Operation Plan**

##### **106.2 Type of operations to be conducted:**

RESPONSE: A series of 2 1/2" holes are drilled on 9' centers which are each 7' to 10' in depth - the depth of each hole depends on the thickness of limestone locally. This drill hole pattern will cover a blasting area of 300' by 300'. The blasting agent used is Ammonium Nitrate and Dynamite with each hole being loaded with one stick. The typical equipment used in the operation and their tasks are as follows:

<u>Equipment</u>	<u>Tasks Performed</u>
Track Dozer	Clearing topsoil and ripping
Wheel Loader	Clearing and loading of materials
Air Track and Compressor	Drilling bore holes for blasting
Track Back hoe with Breaker	Breaking limestone
Rock Crusher	Crushes limestone
Screening Plant	Screen limestone to size
Lube Truck	Lubrication of equipment
*Fuel Truck	Fueling equipment
*Note: Earth Berms are constructed around any fuel tanks to contain any spillage that may occur if any.	

106.4 Nature of materials mined, waste and estimated tonnages:

RESPONSE: The material that is mined and processed is fresh water limestone from the Flagstaff formation. This limestone deposit is partially covered with a thin layer of topsoil. This thin layer of topsoil is scraped and pushed into a pile and later used in the reclamation of the local area. The approximate annual tonnage of limestone mined is based on what ever contracts may be in place on any given year, however the average annual tonnage requirements for limestone to date is about 25,000 tons. In the mining and processing of the 25,000 tons produced annually an additional 10,000 tons (approximate) is also produced as either a by-product or waste product.

Of this, all by-product material will be sold, and all waste product (usually clay and dirt) are stock piled and used later as fill to slope high walls running along the sides and faces of the quarry.

106.5 Existing soil types, location, amount:

RESPONSE: On November 14, 1994 all soil data that was required was submitted on this date, however may it be noted that all topsoil data that was submitted was collected from expansion areas and was not from any processed materials.

106.6 Plan for protecting & redepositing soils:

RESPONSE: Any and all existing topsoil is scraped and pushed into stockpiles and later spread over the local area for seeding purposes. No cover is placed on existing soil stockpiles due to the short periods of time between stockpiling and spreading which is usually about a two year period which period of time is not a sufficient period of time for any substantial erosion to occur.

106.7 Existing vegetation - species and amount:

RESPONSE: A conflict exists between the percentage of vegetation cover found to exist on the premises by the Division and that percentage found by the applicant. This issue will be resolved in the spring of 1999 by a re-surveying of the area with regards to the vegetation cover present.

106.8 Depth to ground water, extent of overburden, geology. Has any of your drilling activities intercepted any ground water resources to date? To what depth have you drilled the minable ore reserves?

RESPONSE: We are not aware of any seeps or springs in this area - we



have drilled the top 15' and have not encountered any water whatsoever.

106.9 Location & size of ore, waste, tailings, ponds:

RESPONSE: On a typical year a stockpile of waste amounting to approximately 1,000 to 4,000 tons of material is stored in close proximity to active mining operations. At the end of the year this material will either be moved to another primary waste stockpile to be used at a later date for reclamation, or it may be currently used at that time for fill depending on circumstances existing at that time, however irregardless of when all waste material is used it will all be used in the reclamation process as fill (also see 106.4).

**R647-4-107 - Operation Practices.**

107.3 Erosion control & sediment control:

RESPONSE: There are no slopes greater than 3 to 1 for any significant distance. We are leaving site in rough condition to help control any run off if any.

107.4 Deleterious material safely stored or removed:

RESPONSE: Contractors bring in their own fuel in a portable tank as needed and no permanent or full time fuel storage system exists on the premise. Earth Berms are constructed around any fuel tanks to contain any spillage that may occur if any.

107.5 Suitable soils removed & stored:

RESPONSE: All available soil is being stored and used for future reclamation.

107.6 Concurrent reclamation:

RESPONSE: See map submitted and attached hereto.

**R647-4-109 - Impact Assessment.**

109.1 Impacts to surface & ground water systems:

RESPONSE: We are not impacting water quality. Beaver Creek is the closest water source in this area, and any mining that will take place will be at least 400 ft. away.

109.4 Slope stability, erosion control, air quality, safety:

RESPONSE: All high walls will be back filled and sloped, and any and all waste piles will be used as fill material.

**R647-4-110 - Reclamation Plan.**

110.1 Concurrent & post mining land use:

RESPONSE: Post mining uses are cattle grazing and wildlife.

110.2 Roads, high walls, slopes, drainages, pits, etc., reclaimed:

RESPONSE: Private land owner requires that all roads stay in place for property access. It is anticipated that low areas and depressions may exist in several areas but doubts that any of these areas will impound water for any substantial periods of time and expects any water accumulation due to snow pack run off or summer rains to natural drain and /or evaporate in a short period of time. We are using all waste materials to fill high walls.

110.3 Description of facilities to be left (post mining use):

RESPONSE: The following pre-existing facilities are required by the private land owner to be left in place after post mining use :

1. All roads that access the property.
2. That certain metal building that sets along the North side of the main access road on the premises.
3. That certain loading ramp and chute facilities located on the premises along the South side of the main access road.

110.5 Revegetation planting program:

RESPONSE: The revegetation plan for this project has already been outlined and a recommended seed mix will be used.

**R647-4-111 - Reclamation Practices.**

111.8 All roads & pads reclaimed:

RESPONSE: All waste piles and pads will be reclaimed, however all roads that access the premises will be left in place at the request of the private land owner.

111.9 Dams & impoundments left self draining & stable:

RESPONSE: This issue has already been previously addressed (see 110.2).

111.11 Structures & equipment buried or removed:

RESPONSE: All trash and debris will be hauled off and/or buried on the premises.

111.12 Topsoil redistribution:

RESPONSE: This issue has already been addressed (see 107.5).

**R647-4-112 - Variances.**

RESPONSE: The following variances are hereby requested:

1. Access roads and pre-existing structures left in place at request of private land owner.
2. Top soiling and revegetation standards for pre-existing areas.
3. A variance to leave a water impoundment area just South of the Northerly boundary limits of the mining areas to facilitate snow pack melt and summer rains.

**R647-4-113 - Surety.**

RESPONSE: In 1998 Emery Industrial Resources, Inc., reclaimed five acres on the South end of Cherry Hill Park Limestone Quarry which reclamation costs were as follows:

Total reclamation costs for five acres was \$5,000.00 which is equivalent to \$1000.00 per acre. Of this \$5,000.00, \$3,300.00 was spent on equipment, \$1,200.00 on labor, and \$500.00 for seed.

Using the figure of \$1000.00 per acre for reclamation costs, and it appearing that approximately 10 additional acres have been affected at the Cherry Hill Park Limestone Quarry it appears that a minimum of \$10,000.00 would be needed to reclaim this site. Therefor Emery Industrial Resources, Inc. would be willing to post a bond in the form of either a letter of credit from a reputable lending institution or a certificate of deposit in this amount.

**R647-4-115 - Confidential Information**

RESPONSE: We would appreciate it if all of the material contained in this report was treated as confidential.

I hope this gives you the information that you requested of which is necessary to finalize our Large Mining Permit. If you have any further questions or if I can assist you please contact me.

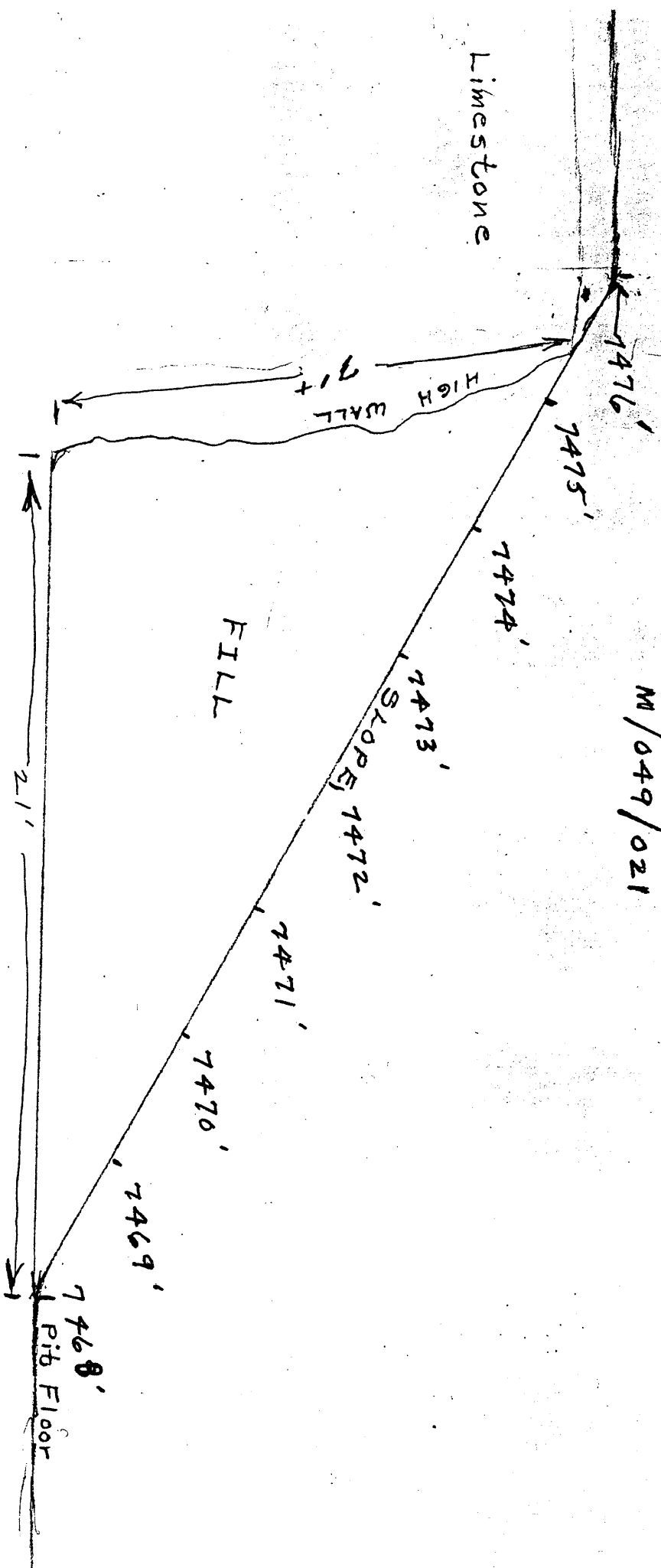
Sincerely,

A handwritten signature in cursive script, appearing to read "Dan L. Powell".

Dan L. Powell  
Operations Manager  
Emery Industrial Resources, Inc.

# Typical Pit Cross Section Cherry Hill Park Quarry

M/049/021



EX 3

## Emery Industrial Resources

### Cherry Hill Park Mine M/049/021

#### Permit Chronology (last update August 13, 2004)

July 8, 1992	DOGM received Small Mining Operations Notice for Cherry Hill Project from operator.
July 20, 1992	Division accepted SMO for Cherry Hill Project – no variances.
July 22, 1993	Site inspected, area estimated to be just less than 5 acres.
July 7, 1994	Letter from Division to Dan Powell – asked about status of LMO application for this project – Questioned his intention of plans to go to a large mining operation.
July 27, 1994	Site inspection found disturbed area greater than 5 acres. Operator had estimated 7 acres, and has posted a reclamation surety with Utah County for 9 acres of disturbance.
July 27, 1994	Site disturbance map received by the Division from operator.
August 24, 1994	Letter to operator requiring submittal of LMO within 45 days.
October 7, 1994	Operator provided copy of bonding documents to DOGM that have been filed with Utah County (9 acres bonded at \$1,600 per acre, total bond is \$14,400.00 – LOC made out to Utah Co. Board of Commissioners). Operator also requested an additional 30 days to submit LMO.
October 14, 1994	Division granted 30-day extension.
November 14, 1994	Division received original LMO from the operator.
January 31, 1995	Annual report submitted – identified approximately 8 acres of disturbance.
June 2, 1995	Division sends deficiency review comments of LMO to Emery Industrial.
February 23, 1996	Annual report submitted – identified approximately 12 acres of disturbance.
October 27, 1997	Letter sent to Emery Industrial requested operator to respond within 45 days of the June 2, 1995 review, which is now over two years old.
December 4, 1997	Operator requested an additional 90 days to complete response to the Division's deficiency review, stating that he would need outside help to complete land surveys, soil surveys, etc.
January 12, 1998	Operator's request for an additional 90 days is denied, operator given until February 27, 1998 to submit formal response to the Division's review. A timetable was to be submitted which outlined when information that was not available would be submitted.

February 5, 1998	Annual report submitted – approximately 13 acres disturbed.
February 27, 1998	Received fax from operator (re: response for completion of permitting), which stated that he would reclaim a portion of the site, and a certified copy and an updated map would follow.
December 9, 1998	Division sent letter to Emery Industrial requesting a formal submission of all permitting materials collected to date. The Division never received the certified copy or map. Letter stated that if sufficient acreage had not been reclaimed to reduce the disturbed area to less than five acres, then a complete LMO must be filed with the Division by January 31, 1999.
January 29, 1999	Annual report submitted – approximately 5 acres reclaimed (this would leave 8 acres based on 1998 annual report).
March 3, 1999	Operator submits revised LMO.
September 22, 1999	Site inspected – GPS survey of the disturbed area shows 20.6 acres disturbed (19.7 acres which will require reclamation, and 0.9 acres that will remain unreclaimed). The 5 acres reported as being reclaimed was 4.3 acres (as determined with the GPS) and reclamation had not been completed (topsoil had not been replaced and no evidence that the area had been seeded).
September 30, 1999	Division completes second deficiency review of LMO (3/3/99 submittal).
February 22, 2000	Annual report submitted – identified only 8 acres of disturbance plus 5 acres that had been reclaimed.
January 23, 2001	Sent CRR letter stating we have not received a response to our 9/30/99 review comments to date. Another copy of comments sent w/letter. Please respond w/in 30 days from receipt of this letter. Operator received letter on January 29, 2001.
January 29, 2001	Annual report submitted – identified 8 acres of disturbance.
May 7, 2001	Operator came into office, claimed letter DOGM sent 1/23/2001 was sent to the wrong address (went to Stephen Powell instead of Dan Powell). Hand delivered a copy of the letter to Dan Powell today and gave him until the end of June, 2001 to respond.
June 29, 2001	Letter received from the operator requesting a meeting to discuss the review and a timeframe to make a submission.
July 9, 2001	Letter to operator establishes July 30, 2001 date for meeting at the Division.
July 30, 2001	Meeting held at Division to discuss DOGM 9/30/99 review letter. Operator granted another 45 days to submit information @9/14/2001.
August 16, 2001	Sent letter documenting meeting held on 7/30/2001 and commitments made by operator. Operator agreed to have response to DOGM w/in 45 days from meeting date, or by 9/17/2001. At the meeting it was discussed that it is likely that the operation will be transferred to Utah Rock, Inc. once the permit is finalized.

September 6, 2001	Site inspection performed, noted Musk Thistle weed problem
September 13, 2001	Sent letter stating site inspected 9/6/2001 showed signs of Musk Thistle infestation. Requested operator control this noxious weed now, which will make revegetation easier upon final reclamation. DOGM rules do not require this, but the Utah Noxious Weed Act does.
September 17, 2001	Phone call requesting another two-week extension to respond. Granted to 10/1/2001.
January 22, 2002	Sent CRR Division Directive. It has been over 100 days since Division extended date to 10/1/2001 to submit response to 9/30/99 review. Must contact Associate Director w/in 10 days to schedule a meeting to discuss options to remedy situation.
January 31, 2002	Phone call to Dan Powell regarding 1/22/2002 CRR letter. He only occasionally gets to Price to pick up mail (he lives in Utah County). The letter was faxed to him today; therefore, operator received DOGM 1/22/02 CRR letter today! Response due by 2/11/02.
February 11, 2002	Phone call from operator - wants meeting scheduled for 2/25/02.
February 19, 2002	Phone call from operator - requested meeting to be rescheduled for early March. Operator and Division agree on March 12, 2002.
February 27, 2002	Received 2001 annual report. States no activity since 1998. Current plans call for possible mining during spring/summer with follow up reclamation as needed.
March 12, 2002	Meeting with Mr. Powell, Associate Director and minerals staff at DOGM. Went over operator's proposed responses to outstanding technical deficiencies. Mr. Powell agrees to provide formal response to DOGM no later than March 22, 2002.
March 19, 2002	Letter sent to operator outlining agreements reached during March 12 <sup>th</sup> meeting.
April 3, 2002	Phone call to Dan Powell requesting status of technical response. Mr. Powell states difficult time acquiring all requested information. Taxes due, needs couple more weeks to provide the formal submittal.
May 14, 2002	Notice of Non-compliance and Division Directive faxed and certified mail to operator ordering suspension of operations, posting of reclamation bond and submittal of remaining permit deficiencies. 30-day deadline established from receipt of letter to post surety.
June 11, 2002	DOGM received response to our 9-30-1999 technical review letter.
June 26, 2002	Site inspected, site inactive at time of inspection. Operator failed to show up for scheduled inspection to discuss topsoiling concerns and reclamation performed.
July - Dec. 2002	Several phone calls and personal contacts with the operator to discuss where the reclamation surety was. Operator would state that he is working on it and should have it to us within the next week to ten days; or some calls stated it would be delivered within the week. Each contact was not officially documented.



January 9, 2003	Sent proposed Agency Action letter to be delivered by Utah County Sheriff's Office, for unfulfilled mitigation requirements pertaining to DOGM's Notice of Noncompliance – Required \$43,500 surety to be posted by June 28, 2002. The proposed agency action is to deny approval of the LMO Notice of Intent, withdraw acceptance of SMO submitted 7/8/1992 and seek an Order from the Board requiring operator to commence reclamation of existing mining related disturbances on a schedule to be determined by DOGM. If operator wishes to appeal this action formally before the Board, or informally with the Division's Director, he must notify the Division within 10 days. Failure to file such a request may preclude operator from further participation, appeals or judicial reviews. If this is not appealed, the proposed Agency Action will become final and the Division will seek an Order from the Board as described above.
January 14, 2003	Utah County Sheriff served operator with the 1-9-2003 letter. DOGM received notification from the sheriff on 1-17-2003.
January 16, 2003	Operator called the Division to set up an informal conference before the Division Director – conference scheduled for January 28, 2003 at 10:00 a.m.
January 28, 2003	Informal conference held with DOGM Director & management. Dan Powell hand delivered a letter from Cornerstone Insurance Agency, Inc. stating Dan Powell of Emery Industrial Resources, Inc., is currently applying and awaiting approval of the \$43,500 surety bond required for Cherry Hill Park. They have submitted the application to several approved Surety companies and will be able to give him an answer regarding eligibility in a few days. (hand delivered by Dan Powell at the informal conference
February 7, 2003	Received original and copy of transcript of informal conference held 1/28/2003.
February 20, 2003	CRR letter sent from DOGM Director - Findings of Fact, Conclusions of Law & Order in response to 1/28/2003 informal conference. Order: 1) Operator to immediately cease all mining operations until written approval has been received from DOGM; 2) DOGM to inspect and file written report on disturbances w/in 10 days; 3) if w/in 30 days operator has not provided acceptable form and amount of surety, DOGM will initiate an agency action before the Board asking for immediate reclamation and payment of civil penalties. The Operator received this letter on February 26, 2003.
March 3, 2003	Site inspection in response to Director's Order of 2/20/2003. Inspection report sent to Associate Director as directed in Order. Inspection found the site inactive, with no apparent change at the site since the last inspection on July 26, 2002.
March 14, 2003	Received 2002 annual report (hand delivered and signed by Mr. Powell). Site last active in 1998. Future plans subject to available markets - plans call for mining and reclamation as needed. Mr. Powell also informed Wayne Hedberg that he was still working on getting bond. The bonding agent is working with a couple of bonding companies. He will contact the agent this coming week.
March 17, 2003	Mr. Powell came into DOGM office. Asked when bond was due - Wayne told him he thought by March 20th. Mr. Powell asked us to please verify the date and let him know for sure. He will contact his insurance broker for an update. He may have to ask for additional time. Mr. Hedberg agreed to call and confirm date.

March 18, 2003 Lynn Kunzler called Mr. Powell to verify reclamation surety was due on March 20, 2003. Mr. Powell was told that if he needed more time, that he would need to contact Lowell Braxton to make the request.

March 19, 2003 Mr. Powell called OGM (Tom Munson) and requested an extension to submit his reclamation surety. OGM staff (Wayne Hedberg) consulted with upper management (Mary Ann Wright & Lowell Braxton) who agreed to extend deadline another two weeks. Wayne called and left voicemail messages on 4/19 & 4/20 informing Mr. Powell of the 2-week time extension & requested he return call confirming his acceptance.

March 20, 2003 Mr. Powell returned call, left voicemail message w/Wayne Hedberg confirming acceptance of timeframe extension to 4/3/03.

March 20, 2003 CRR letter sent to Mr. Powell modifying the February 20, 2003, Findings of Fact, Conclusions of Law and Order. The letter extended the timeframe to provide reclamation surety an additional two weeks until April 3, 2003 to provide the required surety. If you are unable to post the surety within this timeframe, the Division will proceed with the issuance of a Notice of Agency Action for a formal hearing before the Board to resolve this matter.

March 21, 2003 OGM faxed Mr. Powell a copy of the letter formally approving the time extension to April 3, 2003 to submit the required reclamation surety.

April 3, 2003 Mr. Powell called Tom Munson about 11:30 a.m., indicating that he could not get a surety bond from Cornerstone Insurance. He stated he will go to his bank to get a letter of credit. Mr. Powell was told he needed to contact Wayne Hedberg or Lowell Braxton regarding this situation. Mr. Munson relayed the message to Mr. Hedberg immediately after the phone call ended.

April 3, 2003 Wayne Hedberg informed Division Director of Mr. Powell's call to Mr. Munson. Director advised proceed to prepare Notice of Agency Action if the bond is not received by the 5:00 p.m. filing deadline.

April 10, 2003 Notice of Agency filed with the Secretary to the Board wherein DOGM petitions the Board for an Order to: 1) withdraw the existing notice of intention as a result of the operator's expansion of the original small mine operation beyond the 5 acre limits without prior approval by DOGM and the DOGM's denial of the Notice of Intention to Commence Large Mining Operations due to failure of the operator to post an adequate bond; 2) require that the respondents cease mining; 3) require the mine operator Emery Industrial Resources and/or Dan Powell to commence immediate reclamation of all pertinent lands affected by the Cherry Hill Park Mine; and 4) provide that in the event required reclamation is not completed by the operator that the Division shall be authorized to complete the reclamation work and seek recovery of costs and expenses of reclamation from the responsible parties in any appropriate court.

May 1, 2003 Notice of Hearing posted stating the Board will conduct a hearing on Wednesday, May 28, 2003 at 10:00 a.m., or as soon thereafter as possible in the Board Room of the DNR building. The hearing will be conducted as a formal administrative adjudication for the Board to receive testimony and evidence regarding an Order:

1) withdrawing the Small Mine Notice of Intention, 2) requiring the respondents cease mining; 3) requiring immediate reclamation; 4) in the event reclamation is not completed the Division shall be authorized to complete the reclamation and seek recovery of costs and expenses in any appropriate court; and 5) providing such other relief as the Board may deem just and equitable under the law and facts adduced in the proceeding herein.

May 7, 2003	The Notice of Agency Action filed April 10, 2003 by the Board Secretary addressed to Dan Powell, as agent for Emery Industrial Resources, PO Box 489, Price, Utah was returned to DOGM marked "unclaimed."
May 8, 2003	Site inspection performed. The site is still inactive. There have apparently been no changes made since June 26, 2002. The operator needs to control the musk thistle on site. The area that was reclaimed needs to be regraded along the contour, topsoil applied, ripped and seeded (again). Water needs to be controlled (both run-on and run-off). When the site is reclaimed, the ephemeral drainage may need to be reconstructed along the western side of the disturbed area.
May 14, 2003	Letter sent to Mr. Powell enclosing supplemental exhibits to the Notice of Agency Action (certain maps and photographs pertaining to the Cherry Hill Park Mine). On May 28, 2003, DOGM plans to introduce some, or all of these exhibits as testimony at the hearing.
May 19, 2003	Lynn Kunzler received phone call from Peggy Kelsey (Utah County Planning) regarding the bond Utah County holds. In 1994, Utah County provided DOGM with a copy of a \$14,400 LOC. Last week, Lynn called the County to see if the bond money would be available to the State, assuming we prevail with the hearing the Board orders the site be reclaimed. The County would look into the bond situation. Lynn was informed today that the LOC is no longer valid. It was issued for one year with the right to renew. Dan Powell did not exercise the renewal and the LOC expired almost 9 years ago. There is no reclamation bond for this site. The County stated with would be sending Mr. Powell a letter requiring immediate bonding of the site for 19.74 acres of current disturbance.
May 31, 2003	Article in the Salt Lake Tribune – Limestone Mine Faces Closure.
June 23, 2003	Findings of Fact, Conclusions of Law and Order filed by the Board as a result of the May 28, 2003 hearing. The Order states: A) the Notice of Intention to Commence Small Mine Operations is ordered withdrawn; B) Respondents are order to cease any and all mining operations at the Cherry Hill Park Mine; C) Respondents Dan Powell and Emery Industrial Resources have 60 days from Board hearing dated May 28, to submit a mine reclamation surety in the amount of \$43,500 in a form acceptable to the Division. If approved surety is timely submitted, the Respondents Notice of Intent to Commence a Large Mining Operation is approved; D) If Respondents fails to submit surety w/in 60 days, the Board grants all additional relief requested in paragraphs A, B, C & D of the Prayer for Relief of DOGM's 4/10/30 Notice of Agency Action; E) Notice re Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration may be filed w/in 30 days; F) The Board retains continuing jurisdiction over all the parties and over the subject matter of this Cause, except to the extent is divested by filing of appeal of this Order by the Utah Supreme Court;

and G) the Chairman's signature on faxed copy of this Order is deemed equivalent of a signed original.

July 28, 2003

Dan Powell called Mary Ann Wright about 5:10 p.m. He stated that reclamation commenced 10 days ago and he is still intending to get the bond so he can continue to mine the site. Mr. Powell asked Ms. Wright what his deadline was and was told that she did not have the Order right at hand, so did not know. She asked if he received the order and he replied "yes." Ms. Wright told him that the matter was no longer in her hands, but in the Board's hands and Attorney General's Office; thus she could not grant extensions of any sort. The phone call was then transferred to the Board Secretary.

August 7, 2003

Site inspection performed as Dan Powell indicated reclamation had been started. No evidence of any recent regrading activity. The musk thistle was now apparent and there was a piece of screening equipment on site. Information needs to be reported to the Board as the Board withdrew Mr. Powell's small mining notice and order him to cease all mining operations. Also he was ordered to submit a \$43,500 bond or reclaim the site within 60 days. The bond has not been posted and there is no evidence of reclamation being initiated. It appears a small amount of material has been processed through the screening equipment since DOGM's 5/9/03 inspection, done prior to the Board hearing on 5/28/03. The operator needs to control musk thistle on the site. This noxious weed is likely to cause problems with revegetation and may spread to surrounding areas.

September 5, 2003

Post Office updated Dan Powell's address from 262 South 800 West, Payson, Utah 84651 to 148 South 100 East, Spanish Fork, Utah 84660-2103.

October 7, 2003

Site inspection performed to see if there was any reclamation or mining activity. A front end loader was putting material through an operating screen. No equipment on site to haul material off. The operator has claimed the screening is being done as part of reclamation, so Nielson Construction personnel was not asked to cease operations. Nielson has been asked to smooth out the piles as the screening was being done to help facilitate reclamation. Inspector was told that three truckloads of material had been taken from the site last week for testing purposes. Dan Powell had requested that Neilson crush 40,000 tons of material, but this was not being done.

October 7, 2003

E-mail message from Wayne Hedberg to file. On this date, DOGM inspector, Paul Baker stopped at this site on his way to performing inspections in Moab. Mr. Baker observed active screening operations and stopped to investigate, after which he telephoned and left voicemail messages with Mr. Hedberg and Mr. Kunzler. Paul spoke with two men working for Neilson Construction about the ongoing sorting and screening activity. He was told that Steve (and Dan?) Powell had contracted with the company to screen certain stockpiled materials. He said that 3 truckloads of screened material had been removed from the site last week for "testing" purposes. He said he believed it was Mr. Powell's intention to sell the fines and have him scatter the residual material as a form of site reclamation. According to Board Order of May 28<sup>th</sup>, surety was to be posted or reclamation to begin w/in 60 days. Neither have occurred to date.

Wayne called Kevin Peacock of Neilson Construction, and recommended that they cease mining/screening activities, since neither Neilson Construction, Emery

Industrial or the Powell's have authorization or approved permits from this office to mine, process or remove materials from the site. Mr. Peacock indicated he understood all permits were in order before he began screening activities. He agreed to terminate their current mining activities. Mr. Peacock also expressed concern about the noxious weed (bull thistle) problem and the possibility of transporting it offsite with the screened materials. He was informed that DOGM was aware of the problem and the operation had been directed to take care of this problem several years ago.

October 8, 2003

Dan Powell called Mary Ann Wright at 8:40 a.m. today to ask why we had shut down Nielsen Construction's activities. She told him he did not have a permit to mine, which meant severing materials and hauling them from the site. Mr. Powell informed her that he felt he was exempt because it was sand and gravel. Ms. Wright told him he was mining limestone and he is not exempt. He countered that the material in the stockpiles had to be screened in order to perform reclamation. He then asked for a copy of the bond calculations for the \$43,000 bond to see if screening was in there. Ms. Wright pointed out the weed problem and he said he had the weeds pulled and admitted that they should have been bagged. Ms. Wright told him that now the weeds are entrained in the soils at the site.

October 15, 2003

E-mail message from Wayne Hedberg to file. Following suggestion from counsel, Mr. Hedberg called E.J. Stokes, land owner of the mine property to see if he was aware of the current activities conducted by Dan & Steve Powell and if these operations were authorized under his lease with them. He said he had received a call from Steve Powell within the past 2 weeks saying they were trying to get something going. Mr. Stokes stated the operation was in default under several provisions of the lease/contract, although he has taken no action to date to formally advise them of this. He said he was waiting to see what was going to be worked out with the State and EIM first. Mr. Stokes was to receive a royalty for any material removed and has been many years since he has received any money from the operator, but only received promises. Mr. Stokes lease requires reclamation when mining ceased. Mr. Hedberg asked if he would be willing to assume the permit and bond the site in place of EIM. He said probably not because he would need some source of income from the property to post a bond. He prefers to have the property developed/mined. If the Powell's or someone else is unable to continue mining, he wants the mine site reclaimed.

October 20, 2003

DOGM's surety cost estimate sent to Mr. Powell (at Payson address) was returned from P.O.

October 21, 2003

Re-mailed surety cost estimate to Spanish Fork, Utah address.

November 14, 2003

E-mail message from Wayne Hedberg to Mary Ann Wright and Minerals Staff. In response to commitments made during a meeting with Dan Powell on October 28<sup>th</sup>, a phone call was made to him seeking information on status of reclamation proposal which he promised to send to DOGM by 11/14/03. Mr. Powell explained he had not had an opportunity to schedule a meeting with Steve Powell and Nielson Construction yet as he had been preoccupied the last 2 weeks preparing for his marriage tomorrow. He asked for another 2-weeks to submit the plan. He said he would call on November 24<sup>th</sup> with an update on the status of his plan. Their plans had not changed from what was discussed in the meeting last month. He plans to

meet with his cousin (Steve Powell) and the contractor soon and submit their plan by the end of November.

- December 8, 2004 E-mail message from Wayne Hedberg to Mary Ann Wright and Minerals Staff. On December 5, 2004 Mr. Hedberg called Mr. Powell on his cell phone, no answer but left voice message. On 12/8/04 was successful in reaching Mr. Powell and asked for an update. He stated he was still getting settled in (presumably from recent marriage), but had called Steve Powell a week or so ago about setting up meeting w/Nielson Construction to discuss their plans. He has not heard back from Steve yet, but will give him a call. Mr. Powell agreed to call me later this week with an update.
- December 12, 2003 Lynn Kunzler received phone call from Dan Powell about 9:30 a.m. because he was unable to reach Mr. Hedberg. Mr. Powell has: 1) scheduled meeting with Nielson's next Wednesday. He is hoping to leave the meeting with a signed agreement in which Nielson's would buy material at \$x per ton. The money would go into an escrow with us until there was sufficient for the bond. As they remove materials from the site, they would also reclaim areas no longer needed, thus reducing the overall reclamation liability; 2) he will have a copy of the agreement for Steve Alder and us to review by next Friday (December 19<sup>th</sup>). Mr. Kunzler asked Mr. Powell to call us this weekend with updated on the overall progress at the site. He would like to still eventually have this site permitted.
- December 22, 2003 E-mail message from Wayne Hedberg to Mary Ann Wright and Steve Alder. Mr. Kunzler called Dan Powell to check status of promised agreement due 12/19. Dan Powell explained that Steve Powell contacted Nielson Construction last week about setting up a meeting to prepare a development/reclamation agreement. A meeting is supposed to be scheduled this week, but hasn't heard from Steve yet regarding specific date. Dan will call Steve tonight if he doesn't hear from him today. He will then call Wayne with information after he reaches Steve to confirm their plans.
- January 14, 2004 Received (via fax) from Sidney Balthasar Unrau, Esq, representing Emery Industrial Resources, Inc., a draft copy of Business and Sales Contract for our review.
- January 22, 2004 Received (via fax) from Sidney Balthasar Unrau, Bond and Reclamation Agreement for Emery Industrial Resources Cherry Hill Mine requesting DOGM execute. Attached is Business and Sales Contract between EIR and Nielson Construction signed 1/19/04 by Dan Powell of EIR, Nielson Construction and Stephen Powell. (Note: Stephen Powell's signature is dated 11/19/04 - which should be 1/19/04).
- January 27, 2004 E-mail message from Wayne Hedberg to Mary Ann Wright. Wayne received 2<sup>nd</sup> call from Dan Powell this morning. Steve Powell is advising him of pressure from Sunnyside Cogeneration to sign proposed contract to provide 300 tons week wastestream material (fines) starting this week. Wants to know if we can provide temporary okay allowing Nielson's to prep site and then remove 300 tons from existing Cherry Hill stockpiles. He is willing to come in and meet with Board Wednesday if necessary.
- February 13, 2004 Received copy of letter from Dept of Agriculture to Dan Powell, regarding him not taking care of Musk Thistle on Cherry Hill site. Agriculture needs to talk with you

about this problem to reach a solution. We have been unable to contact you; therefore, please contact us to set up appointment.

February 18, 2004

Letter from Steve Alder's faxed to Mr. Unrau responding to letter faxed to him 2/17/04 regarding the "workout agreement" for the Cherry Hill Park mine. The suggested changes to the proposed Agreement for Settlement and Reclamation assumes that there is an agreement between Mr. Powell and Neilson Construction Company and that the Division is bound by that agreement. Steve talked with Mr. Neilson and was told that the proposed contract was subject to DOGM approval. DOGM makes it clear that a bond is needed, that the contract is not a substitute for bonding and DOGM does not issue temporary permits. There has not been a response to this information and I assume that Mr. Powell is not in a position to post a bond. In addition, Mr. Neilson informed DOGM that there is not 40,000 tons available in stockpiles. We cannot consent to a contract that required additional mining without a new and bonded permit. A portion of the existing stockpile is needed for backfilling the highwalls. Any agreement must assume there will not be a sale of more material than is in the stockpiles less the amounts needed for reclamation. DOGM has put in writing a proposal with Neilson Construction that would move forward reclamation within these parameters. It does not involve issuing a mining permit.

The proposal is to process and sell available stockpiled material, hold a portion of the proceeds to pay for reclamation and have the purchaser do reclamation work in exchange and pay the purchaser for reclamation work out of the escrow as it is done, subject to holding enough proceeds in reserve to insure that reclamation is completed. An additional \$5,000 guaranty is to be established prior to any sale to be paid directly to the escrow for the benefit of DOGM, less the owner's royalty (i.e. not held by Mr. Powell or Emery). This proposal is a way for Mr. Powell to satisfy the Board Order to reclaim the site. Mining in the future will depend on the nature of the future proposal and the posting of a bond as part of an approved plan. If Mr. Powell does not want to enter into such an agreement, we will pursue other options to clean the mine site up at his expense as provided in the Board's Order. Mr. Powell does not seem to appreciate that he is not allowed to resume mining without a bond and a permit. We may pursue a sale without Mr. Powell's agreement, if other parties can obtain the permission of the Owner.

April 2, 2004

Received copy of Utah County "NOTICE TO COMPLY" for not having a Utah County Business License, and no current reclamation bonding in place. County gave 10 days to comply. No work or action, other than corrective measures is allowed until corrections are completed, inspected and approved. A Business License w/fee has been submitted but is on hold until bonding is in place. If compliance has not been completed by 4/5/2004, this notice will be forwarded to Utah County Attorney's Office for legal proceedings.

April 19, 2004

E-mail message from Wayne Hedberg to Steve Alder and Minerals Staff. Wayne received call from Dan Powell this a.m. informing Wayne that he had received a call from Steve Powell this past weekend advising him that the reclamation/mining was "back on" now. He said that Steve Powell and Nielson Construction had signed the papers (contract?) we sent them and had returned the signed copies back to us. Dan said they had signed papers and forwarded them on to Steve Powell and Nielson's some time ago. Wayne informed Dan that he was not aware of our receipt of any signed papers, but would look into it. Wayne informed Mr. Powell

that we had sent an agreement many weeks ago, which was never responded to. Our AG's office had subsequently sent a follow-up letter to Dan's attorney advising him that because of their lack of action, we would proceed according with requirements of the Board Order.

Dan said when he hadn't heard anything back from Steve or the Nielson's he had been working on a backup plan, which was not to file a bond, but have another party perform the reclamation work for him. All but a small disturbed area would be reclaimed and reseeded. He then planned to permit, bond and mine this smaller area. He was ready to implement his plan now, but felt he had to follow through with the earlier Steve Powell/Nielson Construction agreement that had already committed to first.

Wayne informed him that he had no input into the decision making process, but would forward to upper management and Mr. Alder.

April 22, 2004

AAG letter sent (via fax) to Dan, and Stephen Powell and Mr. Unrau. On April 20<sup>th</sup>, you contacted AAG and wanted to allow removal of 500 tons portion of stockpiled materials to determine feasibility of selling the material to Sunnyside Cogeneration plan. Such a proposal has been arranged as part of the agreement in February with Neilson Construction and Emery Resources. We have consented to your taking a sample of the material for testing subject to payment of an upfront amount to be used toward reclamation of the site and subject to our finalizing an agreement for completion of reclamation along the lines of the prior agreement with Neilson. We understand Neilson is no longer willing to perform and that Stephen Powell dba Powell Rock is willing to be a party to the agreement. This agreement is intended to provide for removal of stockpiled materials in exchange for an agreement to use a portion of the funds received and other funds if needed to reclaim the site. Yu have paid \$500.00 to begin removal of 500 tons of material. Agreement attached for your review and/or signature and return. The reclamation summary is enclosed and will be an exhibit to the agreement. This agreement is based on the Board's order to have the reclamation work completed. The removal of the sample is permitted, but the amount due in advance for removal of the sample must be paid. The right to continue with this proposal will depend on reaching and executing an Agreement and payment of money into the escrow. Future mining will require a new permit and an application submitted to DOGM for review.

May 25, 2004

E-mail message from Wayne Hedberg to file. Steve Alder spoke with Mr. Dan Powell this a.m.. Dan informed Steve that he had met with Alison Garner of the AAG office last Tuesday and Steve Powell had objections to the thickness of the topsoil and manure cover required by the mine plan (Lynn Kunzler and Steve Alder had met with Dan the prior week and Lynn had fully explained how the topsoil was to be spread and how much mulch was required). Dan had met onsite with Steve Powell and observed more material had been removed. Dan told Steve that the material was not to be removed. Steve now has two purchasers for the fines and a contract with Nelco to remove and screen it and with Savage to haul it. He claims the Nelco people now want to post a bond for the full amount of \$43,500 and want to begin mining.

Dan had been to the mine on Monday evening and discovered that the lock had been cut on the gate and more material had been removed. Dan said he told Steve



Powell that he was not allowed to remove anything until the agreement was completed and bond posted. Dan put a new lock on the gate and had received call from Savage who expected to haul more material today (Tuesday - 5/25).

Mr. Alder told Dan (and he seemed to agree) that before he could resume mining, we need a new agreement and would need to rescind the prior agreements and would need to have the bond fully in place and the reclamation plan approved and new permit issued. He understood and said he was meeting with Sid Unrau today at 4:00 to draft an agreement with Nelco. Dan would be back to us with a proposal for the Nelco group to post the bond and apply for the permit.

The Division should go to the site to check the degree of disturbance and consider further actions by DOGM.

May 28, 2004

CRR and Regular Mail sent to Dan Powell, Emery Industrial Resources, Inc, and Steven Powell dba Powell Rock at Castle Dale and Price Utah addresses. Notice to Cease Mining Operations, which was issued verbally to Nelco Contractors on May 25, 2004 by inspection staff at the Cherry Hill Park mine. Division staff observed unauthorized mining activity being conducted without an approved permit to do so. The contractor was directed to immediately cease all further mining related activity until appropriate permits were in place. A pending reclamation agreement and bond that would allow screening and removal of certain stockpiled materials had not been concluded. The Agreement, if finalized, is **not** a permit for mining except to remove the stockpiled material. A Board Order issued 5/28/03 terminated your small mine permit, required you to cease all mining activities and to reclaim the site.

This letter was faxed to Sidney Unrau, Esq. and Steve Demczak of Price Field Office to post on site.

May 28, 2004

Received draft copies of Business and Sales Contract between Emery Industrial Resources and Nelco Contractors.

June 3, 2004

Site map of mining plan for initial work of June 3-10. Work will be removal of southeast stockpile. Signed 6/3/04 by SAU and SP. To be updated with Division by 6/10/04.

June 8, 2004

The 5/28/2004 CRR letter to cease mining copied to Nelco Contractors was returned by Post Office as "no mail receptacle." The letter was resent to a different address.

June 25, 2004

Copy of 6/25/2004 AAG letter to Sidney Balthasar Unrau. Last Friday (June 18<sup>th</sup>), Dan Powell brought modified version of a contract which he represented to have been prepared by you. Prior to this, DOGM had met with Dan & Stephen Powell in an effort to reach an agreement for the removal of material from the mine site to be sold with a portion of the proceeds to be used for reclamation. These negotiations were along the lines of the similar agreement drafted with you on behalf of Dan Powell and Wayne Neilson last winter. That agreement was never completed.

On June 2, 2004, Stephen Powell had signed a new agreement and posted \$7500.00 payment. Copies were provided to Dan to be signed. About another week later,

Dan said he had been too busy to come in to sign the agreement and he wanted to review it with you. I told him that as far as I was concerned there was an agreement in place. Last Friday, Dan brought me a revised agreement that he says you have drafted and it is what he will sign. I find the late desire to make changes to the agreement frustrating (among other things, i.e. not being able to contact or receive any responses from you).

Stephen Powell has now been mining for almost a month since we revised the agreement that he signed. He is now out of compliance since he does not have the written consent from DOGM as to what material can be removed; has not reported the amount removed, has not set up the escrow account with Zions Bank and has not made any additional payments for material taken, despite evidence that substantial amounts have been removed from the site weekly.

I do not want to make changes in the Agreement as proposed by Dan to only have problems with Stephen. Dan and Stephen need to rectify these deficiencies before we discuss the Agreement at all. It would be best to have either Stephen and Dan come to my office or your office and get the other by phone to discuss the changes.

June 28, 2004	DOGM 5/28/2004 Notice to Cease Mining letter sent to Steve Powell at Castle Dale was returned as "unclaimed."
July 2, 2004	DOGM reached Mr. Steve Powell at his home regarding the 5/28/04 Cease Mining letter which was returned as "unclaimed." He assured DOGM that he had seen this letter and they were moving forward. (NOTE: that letter was sent to Steve Powell at two different addresses – and only one returned).
July 29, 2004	Meeting held w/Stephen Powell to discuss reclamation. Received \$1,934.02 additional reclamation monies (total now received is \$9,934.02).
August 5, 2004	Received Notice of Intention to Commence Small Mining Operations and \$150.00 permit fee for Cherry Hill Park.
August 12, 2004	Sent letter to Dan Powell and Stephen Powell regarding removal of materials from site. Pursuant to agreements, DOGM has allowed removal of stockpiled material so long as there is sufficient material remaining to perform reclamation work. Based on the NOI and reclamation plan, @32,000 cubic yards will be needed. No other material can be removed until the reclamation is completed. If there is still excess material on site, the additional material could then be removed. DOGM must inspect the regrading work and make that determination before any more is removed.

With request to screen additional material and stockpile the product in anticipation of there still being excess material available, this is risky since the material may have to be re-mixed to use for reclamation. If the material is removed (even by other contractors) without DOGM written authorization, enforcement action may be taken and fines assessed. If you elect to proceed with screening, knowing the risks, you may do so; however, DOGM makes no promises that it will approve further removal. There must be enough material remaining to complete reclamation.

August 13, 2004

Sent letter returning the SMO application and permit fee. DOGM has determined that we cannot process it. Over 19 acres have been disturbed; therefore, the disturbance exceeds that allowed for a SMO. In order to process a small mine application for this site, the existing disturbance would have to be reclaimed down to below five acres. We are also aware that the Board has an outstanding order at this site that requires, among other things, a bond in the amount of \$43,500 to be posted. Without this order being satisfied, it will be difficult for DOGM to process a permit for any further mining activity at this site.

O:\M049-Utah\M049021-CherryHill\final\chron-04042003.doc

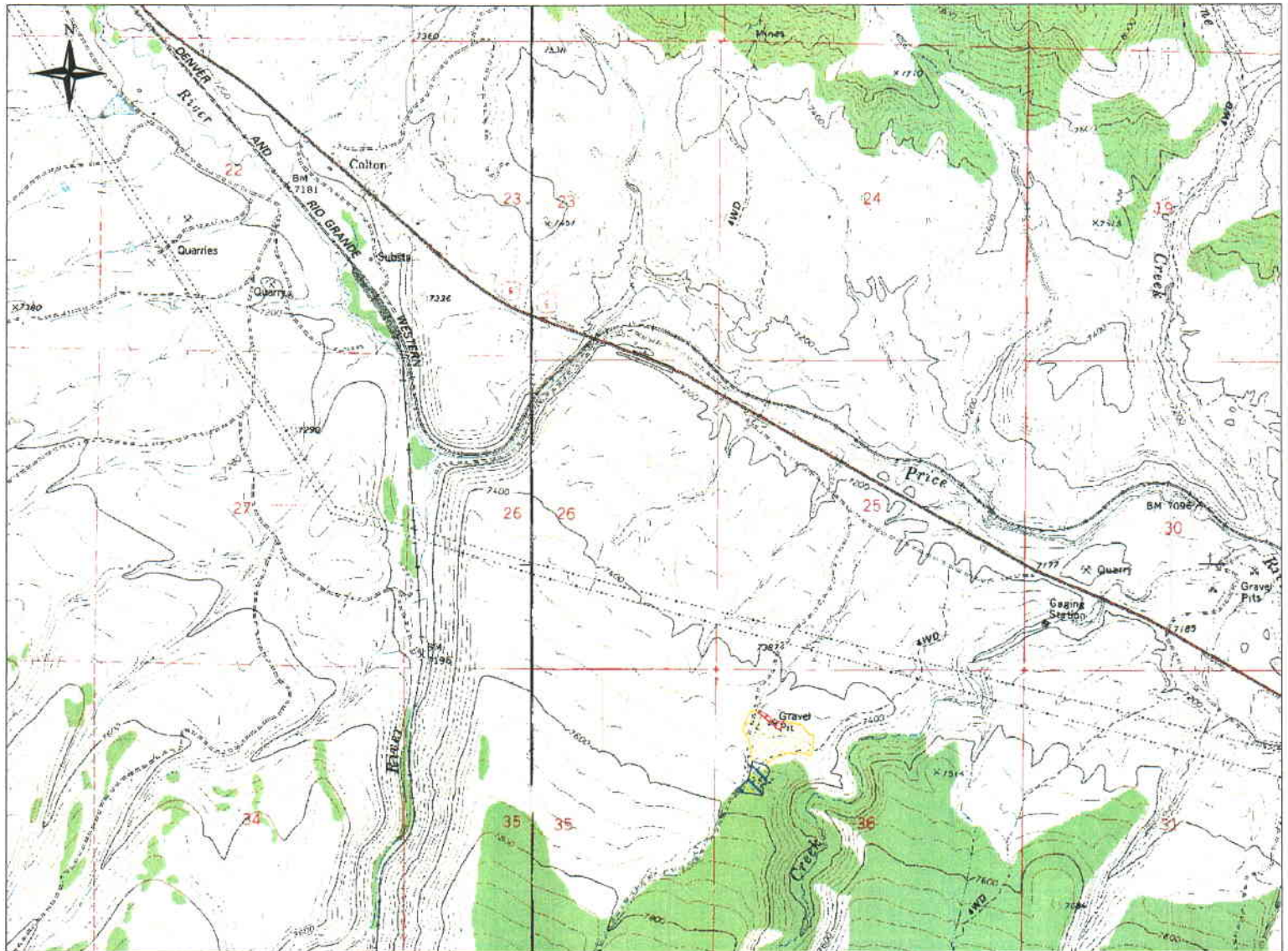
Ex 2




# Emery Industrial Resources, Inc.

## Cherry Hill Park Mine

M/049/021

Kyune Quad



-  Disturbed Area (needing reclamation)  
( 19.74 acres )
-  Regraded Area  
(4.17 acres)
-  Area to Remain (Post Mine Land Use)  
( 0.88 acres )

0.2 0 0.2 0.4 Miles



Northwest 1/4 of Section 36,  
Township 11 South, Range 8 East, SLBM  
Utah County, Utah

This product may not meet DOGM standards  
for accuracy and content. Different  
data sources and input scales may cause  
some misalignment of data layers



Ex 1

# Emery Industrial Resources, Inc.

## Cherry Hill Park Mine

M/049/021



Northwest 1/4 of Section 36,  
Township 11 South, Range 8 East, SLBM  
Utah County, Utah

Kyune Quad

